



January 7, 2003

Via Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: MM Docket No. 95-31
Ex Parte Notice

Dear Ms. Dortch:

Pursuant to Section 1.1200, et seq., of the Commission's Rules, National Public Radio, Inc. ("NPR") hereby notifies the Commission of the following *ex parte* presentations by NPR.

On January 6, 2003, Michael Starling, NPR Vice President for Engineering, Kathy Dole, consultant to NPR, and Gregory A. Lewis, NPR Associate General Counsel, met separately with each of the following:

Commissioner Copps and Alex Johns, Media Legal Advisor to Commissioner Copps
Commissioner Martin and Catherine Crutcher Bohigian, Legal Advisor on Media Issues to Commissioner Martin
Commissioner Abernathy and Stacy Robinson, Mass Media Legal Advisor to Commissioner Abernathy
Susan Eid, Legal Advisor to Chairman Michael Powell

Also on January 6, 2003, Kenneth Stern, NPR's Executive Vice President, joined Michael Starling, Kathy Dole, and Gregory A. Lewis in meeting with Commissioner Adelstein and Sarah Whitesell, Interim Advisor for Media Issues to Commissioner Adelstein.

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Each of the meetings addressed NPR's interest in the above-referenced proceeding as set forth in the Comments and Reply Comments that NPR filed. During the meetings, we distributed and discussed the attached summary of NPR's main points of interest.

Please direct any questions you may have to the undersigned.

Sincerely,

Gregory A. Lewis
Gregory A. Lewis
Associate General Counsel

Enclosure

cc: Commissioner Copps and Alex Johns
Commissioner Martin and Catherine Crutcher Bohigian
Commissioner Abernathy and Stacy Robinson
Commissioner Adelstein and Sarah Whitesell
Susan Eid

SUMMARY OF NPR'S POSITION IN THE "COMPARATIVE STANDARDS" PROCEEDING

NPR recognizes the difficulty of balancing the competing interests of commercial and noncommercial educational, or "NCE," broadcasters to the remaining broadcast spectrum. NPR's longstanding interest in this matter has always been to assure reasonable access to spectrum for NCE stations, which, despite their general lack of financial means, provide a vital public service.

The Commission can assure reasonable access to spectrum by taking the following two steps:

First, the Commission should allow non-profit organizations to participate in auctions. The Communications Act and the Commission's NCE eligibility criteria have always defined an NCE station by reference to both the nature of the applicant and the service it proposes to offer. A non-profit educational organization that is not proposing to provide a noncommercial educational service is not a "noncommercial educational" applicant and should not be precluded from participating in auctions.

Second, the Commission should, as the Second Further NPRM suggested, afford potential NCE applicants an opportunity to seek the reservation of non-reserved channels, including those already allotted and scheduled for auction, and expand the criteria for reserving individual channels. We proposed the following approach.

- Reserved Spectrum is Available. An NCE entity would first demonstrate that it is technically precluded from using the reserved FM spectrum or there is insufficient available reserved spectrum to serve at least 50 percent of the area within the protected service contour of the subject allotment assuming full-class operation of a station at the allotment site ("50 Percent Standard"). If there is reserved spectrum that meets the 50 Percent Standard, the Commission would proceed to auction the non-reserved channel scheduled for auction.
- No Reserved Spectrum and No Other Non-reserved Channel. If there is no reserved spectrum meeting the 50 Percent Standard and there is also no other non-reserved channel available that would meet the 50 Percent Standard, the Commission would reserve the non-reserved channel scheduled for auction.
- No Reserved Spectrum but One or More Other Non-reserved Channels are Available. If there is no reserved spectrum meeting the 50 Percent Standard but there are other non-reserved channels available that would meet the 50 Percent Standard, the Commission would proceed to auction the non-reserved channel previously scheduled for auction but reserve one of the available non-reserved channels.

On the basis of any reservation petitions, the Commission would reserve currently non-reserved channels if appropriate and then proceed to auction all the remaining non-reserved channels previously scheduled for auction. According to an engineering analysis that NPR commissioned, applying this criteria to a random sampling of 25 FM allotments scheduled for auction would have the following result: 21 of the 25 allotments would be auctioned; 4 of the 25 allotments would be reserved for NCE use, and an additional 4 future allotments would be reserved for NCE use. This procedure is consistent

with the Commission's practices and policies and furthers goal of assuring adequate spectrum for commercial and NCE stations.